

NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR****Proceedings through video conferencing****FAM No. 53 of 2017**

1. Dashru Ram S/o Kejuram Lodhi, Aged About 60 Years R/o Village Achholi, Post Pendrawan, P.S. Dhamdha, Tahsil Dhamdha, District Durg, Chhattisgarh.

---- Appellant**Versus**

1. Kumari Neha D/o Dashru Lodhi, Aged About 12 Years Minor Represent Through Mother Smt. Leela Bai W/o Dashru Lodhi, R/o Village Achholi, Post Pendrawan, P.S. Dhamdha, Tahsil Dhamdha, District Durg, Chhattisgarh.
2. Smt. Leela Bai W/o Dashru Lodhi, Aged About 50 Years R/o Village Achholi, Post Pendrawan, P.S. Dhamdha, Tahsil Dhamdha, District Durg, Chhattisgarh.

---- Respondents

For Appellant	-	Ms. Kiran Jain, Advocate.
For Respondents	-	Ms. Renu Kochar, Advocate.

Hon'ble Shri Prashant Kumar Mishra, J.**Hon'ble Shri N.K. Chandravanshi, J.****Judgment On Board****By****Hon'ble Shri Prashant Kumar Mishra J.**

08-04-2021

1. Heard.
2. By the order impugned, the Family Court has dismissed the appellant's application under Section 25 of the Guardians and Wards Act, 1890 (for short 'the Act') seeking custody of respondent No.1 Ku. Neha, who is presently residing with her mother, respondent No.2 Smt. Leela.
3. Marriage between the appellant and the respondent No.2 is not in dispute. Daughter Leela was born out of the wedlock on 07-10-2004. On account of dispute between the appellant and the respondent No.2, they are residing separate. The respondent No.1 is presently staying with respondent No.2, in her parental house.
4. Before the Family Court, it was contended by the appellant that he is a middle class agriculturist having sufficient source of income whereas his wife Leela has no source of income, therefore, the welfare of the minor can be properly protected and served by the appellant. It was further stated that Smt. Leela is not a woman of good character, therefore, for this reason also, she is not entitled to the custody of daughter Neha, who should be handed over to the appellant.
5. The order passed by the Family Court reveals that the respondent No.2 Leela is the second wife of the appellant.

The appellant has three daughters from his first wife, however all are married. The respondent No.2 Leela was earlier married to Dhelau Ram Lodhi, however, she is residing separate from her earlier husband, therefore, the present appellant kept the respondent No.2 as his wife in the year 2001 and from this association, one son Rajkumar and one daughter Neha (respondent No.1 herein) were born. Son Rajkumar is living with the present appellant whereas daughter Neha is living with her mother, respondent No.2 Leela.

6. It was the case of the respondent No.2 before the Family Court that the appellant abandoned the daughter when she was only 6 months old. Thus, he had no love and affection for his daughter since beginning. It was also stated that the application has been filed only to avoid payment of maintenance to the daughter.
7. In the facts and circumstances of the case, the trial Court has found that custody of the minor daughter cannot be allowed in favour of the appellant.
8. We have heard learned counsel for the parties and perused the record.
9. While considering the issue of custody of minor, the paramount consideration is always the welfare of the minor

as held by the Supreme Court in **Smt. Anjali Kapoor V. Rajiv Baijal**¹ and **Mausami Moitra Ganguli V. Jayanti Ganguli**².

10. Considering the issue in the light of this principle, it is to be seen that the daughter Neha was aged about 12 years in December, 2015, when the application was filed before the Family Court, thus, her present age would be around 18 years. Thus, as on date the respondent No.1 Neha is a grown up daughter having her own decision making ability. Ordinarily, a female child should be allowed to stay with her mother. Due to biological reasons, a girl can be better taken care of by her mother during adolescent and youthful days. Otherwise, also the appellant abandoned his daughter when she was only 6 months old, therefore, this by itself is a good ground to refuse appellant's prayer for custody. If he had fatherly love and affection for his daughter, he would have moved application for custody of the daughter immediately when she was taken out of the house by the respondent No.2. Waiting for 12 years to move the application when an order of maintenance has been allowed in favour of the daughter proves that the appellant has filed the application only to avoid payment of maintenance.

1. AIR 2009 SC 2821

2. AIR 2008 SC 2262

11. In view of the above discussion, we are of the considered opinion that the order passed by the learned Family Court is just and proper warranting no interference of this Court.
12. Ex-consequenti, the appeal, sans substratum, is liable to be and is hereby dismissed, leaving the parties to bear their own cost(s).

SD/-

(Prashant Kumar Mishra)
Judge

SD/-

(N.K.Chandravanshi)
Judge

Gowri